

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION ONE

K.O. REAL ESTATE, LLC., Respondent,	)	No. ED91989
	)	
v.	)	Appeal from the Circuit Court
	)	of St. Louis County
GREGORY O'TOOLE, et. al., Appellant.	)	
	)	Filed: June 23, 2009

Gregory O'Toole (Defendant) appeals from the trial court's judgment, following a bench trial, on a rent and possession case filed by Plaintiff K.O. Real Estate, L.L.C. (K.O.) against Defendant.

AFFIRMED.

Division One holds: The Assignment Order issued by the presiding judge reassigned this matter to an associate circuit judge for hearing and determination on the record under the practices applicable to circuit judges, providing for the exception under Section 512.180.1<sup>1</sup>, and therefore, a trial de novo is not warranted. Defendant has a right to appeal to this Court and did so by filing a timely notice of appeal.

The trial court did not err in awarding K.O. with possession of the property leased by Defendant in that the lease was incorporated by reference into the Amended Petition and the record contains substantial evidence that possession was pled and properly awarded. Neither did the trial court err in awarding damages and payments to K.O. under the valid and enforceable lease. President testified to the existence of a writing that authorized K.O. to act as agent for the owner of the Subject Property, which was sufficient evidence for the trial court to find that K.O.'s signing of the lease as agent was valid. Additionally, Section 535.020 authorizes the landlord's agent to sue for rent and possession, which K.O. did as an undisclosed principal for the property owner. Defendant's argument that the trial court erred by entering a judgment that was based on issues contrary to the pleadings in that K.O. acted in a capacity as agent also is without merit in light of the agency evidence admitted by the trial court.

Furthermore, because Missouri Supreme Court Rule 75.01 gives the trial court inherent power to amend a judgment upon a finding of good cause during the thirty-day period after entry of a judgment, the trial court here did not abuse its discretion when it entered the September 12, 2008 Final Order and Judgment amending the original judgment.

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<sup>1</sup> All statutory citations are to RSMo 2000, unless otherwise indicated.

Finally, the trial court did not err in not specifying the amount due for rent and the balance due for the other charges because such amounts were presented as evidence in Exhibit B and testimony. Defendant also made no request for accounting or any other attempt to pay past-due rent under Section 535.160. Defendant was not denied due process of law, nor was the trial court deprived of its jurisdiction.

Opinion by: Kurt S. Odenwald, P.J.      Glenn A. Norton, J., and Patricia L. Cohen, J., Concur.

Attorney for Appellant:      Joseph A. Fenlon

Attorneys for Respondent:      Nicole S. Zellweger and James D. Bass

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